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SEP. 9 1939
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1939.

No. 342.

AMALGAMATED UTILITY WORKERS, affiliated with Utility Workers Organizing Committee, Congress of Industrial Organizations,

Petitioner,

—against—

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., *et al.,*

Respondents.

SUGGESTION OF A DIMINUTION OF THE RECORD AND PETITION FOR ORDER FOR ITS CORRECTION, AND SUPPORTING PAPERS.

ISAAC LOBE STRAUS,
DELAFIELD, MARSH, PORTER & HOPE, and
CLAUDE A. HOPE,
Attorneys for International Brotherhood of Electrical Workers, et al., Respondents,
No. 20 Exchange Place,
New York City.

ISAAC LOBE STRAUS,
CLAUDE A. HOPE,
Of Counsel.

THE COURT PRESS, N. Y. C.

INDEX.

	PAGE
Suggestion and Petition	1
Affidavit of Claude A. Hope	5
Letter of August 30, 1939	7
Notice of Motion to Dismiss	9
Praecipe	13
Clerk's Certificate	16
Letter of August 31, 1939	17
Letter of September 1, 1939	18
Designation	19
Notice of Motion to Dismiss	21

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 342.

In the Matter of the Application of

AMALGAMATED UTILITY WORKERS, affiliated with Utility Workers Organizing Committee, Congress of Industrial Organizations,

To Punish

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its Affiliated Companies, Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, and Consolidated Telegraph and Electrical Subway Company,

For Contempt.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its Affiliated Companies, et al.,

Petitioners,

—against—

NATIONAL LABOR RELATIONS BOARD, et al.,

Respondents.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION No. B-825, et al.,

Petitioners,

—against—

NATIONAL LABOR RELATIONS BOARD, et al.,

Respondents.

SUGGESTION OF A DIMINUTION OF THE RECORD.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioners, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, INTERNATIONAL BROTHERHOOD

OF ELECTRICAL WORKERS, LOCAL UNION No. B-825; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION No. B-839; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION No. B-832; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION No. B-826; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION No. B-828; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION No. B-829; and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION No. B-830, respectfully suggest to the Court that the printing of only the portions of the Record designated in a certain stipulation between the movant, Amalgamated Utility Workers, etc. and the respondents Consolidated Edison Company of New York, Inc. et al. and a failure to include in the printed Record petitioners' notice of motion which has been designated in the precipe served on behalf of your petitioners and filed in the office of the United States Circuit Court of Appeals for the Second Circuit on the 29th day of August, 1939, a certified copy of which precipe has been filed with the Clerk of this Court, would constitute a diminution of Record not authorized by the rules of this Court upon an application for writ of certiorari to review an order of a United States Circuit Court of Appeals.

Petitioners herein were made respondents in a proceeding brought by Amalgamated Utility Workers by petitioners' notice of motion to adjudge Consolidated Edison Company of New York, Inc. and its affiliated companies in contempt of court. Petitioners made a motion in said proceedings for an order dismissing the petition and notice of motion of Amalgamated Utility Workers on the ground, among others, that Amalgamated Utility Workers had no standing to institute and maintain the proceedings. The Cir-

cuit Court of Appeals denied the relief requested by Amalgamated Utility Workers, placing its denial upon such ground, and subsequently petitioners' motion and a similar motion made on behalf of respondents Consolidated Edison Company of New York, Inc. and its affiliated companies were denied.

Amalgamated Utility Workers being about to apply to this Court for a writ of certiorari to review the order denying its application to punish Consolidated Edison Company of New York, Inc. and its affiliated companies for contempt entered into a stipulation with Consolidated Edison Company of New York, Inc. and its affiliated companies with respect to the papers to be included in the Record, which stipulation provided in part "and the undersigned parties having agreed, by their respective solicitors, that the petitioner for certiorari need not for such purpose designate for inclusion the complete record and all the proceedings and papers herein". The papers specified in said stipulation failed to include the notice of motion filed by your petitioners for an order dismissing the petition of Amalgamated Utility Workers.

Although respondents in the proceedings, petitioners were not parties to the stipulation and were not requested to become parties. No precipe or other designation of the papers to be included in the Record were served upon petitioners by the applicant for the writ of certiorari.

Petitioners thereupon and on August 29th, 1939 served a precipe designating said notice of motion as a paper to be included in the Record herein and filed said precipe with the Clerk of the United States Circuit Court of Appeals for the Second Circuit. Copies of said notice of motion and said precipe were duly certified by said Clerk of the United States.

Circuit Court of Appeals for the Second Circuit and have been submitted to the Clerk of this Court as part of the transcript of record, with the request that they be printed as part of the record. As appears from the annexed affidavit of Claude A. Hope, the applicant for the writ of certiorari has refused to stipulate that the petitioners' notice of motion be included in the printed Record. Petitioners' counsel have been advised by the Clerk of this Court that "in order to add these papers to the Record it will be necessary that counsel stipulate that they be added or that there be submitted a suggestion of a diminution of the Record". Petitioners are causing a formal designation of their aforesaid notice of motion for inclusion in the Record under paragraph 9 of Rule XIII to be filed with the Clerk of this Court herewith and submit this suggestion in accordance with the letter of the Clerk of this Court advising that it be submitted.

Your petitioners verily believe that said notice of motion is a proper and necessary part of the Record and that it is of great importance to have it so included.

WHEREFORE, your petitioners respectfully pray that the Clerk of this Court be directed to print as part of the Record herein the notice of motion served by solicitors for your petitioners dated May 18, 1939 and for such other and further relief in the premises as to this Honorable Court may seem just and proper.

And your petitioners will ever pray, etc.

Dated, September 1, 1939.

ISAAC LOBE STRAUS and
CLAUDE A. HOPE.
Of Counsel for Petitioners.

Affidavit of Claude A. Hope.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1939.

No. 342.

[SAME TITLE.]

State of New York,
County of New York—ss.:

CLAUDE A. HOPE, being duly sworn, deposes and says:

I am an attorney and counsellor at law and one of the solicitors for the petitioners named in the annexed petition.

On or about August 28th, 1939 I learned that a stipulation had been entered into between Amalgamated Utility Workers, etc., applicant for a writ of certiorari herein, and Consolidated Edison Company of New York, Inc. and its affiliated companies to the effect that the entire Record need not be printed and designating for inclusion only certain papers therein specified. The specification of papers to be printed did not include the notice of motion filed on behalf of petitioners to dismiss the petition of Amalgamated Utility Workers in the United States Circuit Court of Appeals for the Second Circuit and dated May 18th, 1939. I immediately communicated with the solicitors for the applicant for the writ of certiorari and requested them to stipulate for the inclusion of said notice of motion in the Record. They refused to do so, stating that they did not recognize

the right of the petitioners named in the annexed petition to have said notice of motion included in the Record herein.

In sending a copy of their petition and brief for the writ of certiorari to me on August 29th, 1939 they stated in the letter with which it was transmitted that they did so as a matter of courtesy and also stated—"Please be advised that we do not recognize the International Brotherhood of Electrical Workers or any of its affiliated local unions as parties to the above mentioned proceeding."

I respectfully submit that unless the Clerk is directed to include said notice of motion in the Record, a certified copy of which is now on file with him, the Record will fail to comply with the provisions of Rules XIII and XXXVIII of the Rules of this Court to the end that the rights of said petitioners to participate in the subsequent proceedings herein may be lost or seriously impaired.

Wherefore, I respectfully request that the relief prayed for in the annexed petition be granted in all respects.

CLAUDE A. HOPE.

Sworn to before me this
1st day of September, 1939.

WILLIAM ADAMS,
Notary Public,
New York County.
N. Y. Co. Clk's No. 138, Reg. No. O A 73.
Kings Co. Clk's No. 68, Reg. No. 146.
Bronx Co. Clk's No. 9, Reg. No. 9-A-40.
Commission Expires March 30, 1940.

Letter of August 30, 1939.

August 30, 1939.

Hon. Charles Elmore Cropley,
Clerk of the Supreme Court,
Washington, D. C.

Re: Amalgamated Utility Workers
v. Consolidated Edison Company of New York, Inc.

Dear Sir:

Certain portions of the Record in the proceeding bearing the above caption were designated by stipulation between Amalgamated Utility Workers, etc. and Consolidated Edison Company of New York, Inc., and its Affiliated Companies in connection with an application by Amalgamated Utility Workers for a certiorari to review an order made by the Circuit Court of Appeals for the Second Circuit denying a motion to punish certain of the respondents for contempt. Although respondents in the proceeding, our clients, consisting of the International Brotherhood of Electrical Workers, Local Union No. B-825, and the other American Federation of Labor Unions were not parties to the stipulation. No precipe or other designation of the papers to be included in the Record was served upon us by the application for the writ of certiorari. The stipulation failed to designate a notice of motion which was filed by us on behalf of our aforesaid clients in the proceedings before the Circuit Court of Appeals.

The papers specified in the stipulation have been certified by the Clerk of the Court of Appeals for the Second Circuit and, we are advised, forwarded to you.

The notice of motion which we filed as aforesaid, was for an order dismissing the petition and motion of the petitioner on the ground, among others, that petitioner had no standing to institute and maintain the proceeding. The denial by the Circuit Court of Appeals of relief to the petitioner was placed upon this ground and consequently our motion and a similar motion made on behalf of respondents Consolidated Edison Company of New York, Inc., et al. were denied.

Having learned of the failure of petitioner to include our notice of motion in the papers forwarded to you and deeming it of the utmost importance to our clients, the respondents American Federation of Labor Unions, that the notice of motion be included in the Record, we prepared and served a precipe requesting its inclusion in the record. The precipe has been filed with the Clerk of the Circuit Court of Appeals for the Second Circuit.

We enclose herewith copy of the notice of motion filed on behalf of the respondents we represent, certified by the Clerk of the Circuit Court of Appeals for the Second Circuit, together with a certified copy of the precipe requesting the inclusion of this notice of motion in the Record. We respectfully request that the printed Record include this notice of motion and will very much appreciate your courtesy in arranging to have it so included.

Yours very truly,

ISAAC LOBE STRAUS,
DELAFIELD, MARSH, PORTER AND HOPE.

WBL:LLH
Enclosures

Notice of Motion to Dismiss.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

[SAME TITLE.]

Sirs:

PLEASE TAKE NOTICE, that at a term of this Court to be held in the United States Court House, Foley Square, Borough of Manhattan, City and State of New York, on the 22nd day of May, 1939, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, the undersigned, in behalf of International Brotherhood of Electrical Workers; International Brotherhood of Electrical Workers, Local Union No. B-825, International Brotherhood of Electrical Workers, Local Union No. B-839; International Brotherhood of Electrical Workers, Local Union No. B-832; International Brotherhood of Electrical Workers, Local Union No. B-826; International Brotherhood of Electrical Workers, Local Union No. B-828; International Brotherhood of Electrical Workers, Local Union No. B-829; and International Brotherhood of Electrical Workers, Local Union No. B-830, the said International Brotherhood of Electrical Workers and each and all of its said Local Unions aforesaid being affiliates of the American Federation of Labor, will move, preliminarily to the hearing of the motion of the Amalgamated Utility Workers, that the petition and motion of Amalgamated Utility Workers, affiliated with the Utility

Workers Organizing Committee, Congress of Industrial Organizations, and all proceedings herein thereon, be DISMISSED, upon the grounds:

(1) That the Amalgamated Utility Workers has no standing, under the National Labor Relations Act or otherwise, to institute and maintain the proceeding and motion as set forth in the notice of motion and petition of the Amalgamated Utility Workers;

(2) That the motion papers fail to show whether the motion and the proceeding are prosecuted by the Amalgamated Utility Workers as in the nature of a civil contempt or a criminal contempt; that the facts alleged in the motion papers and accompanying affidavits do not state and support a charge of either a civil contempt or a criminal contempt, against the employers named; and that neither the motion nor the accompanying affidavits show or allege facts which would establish that any damages were suffered by the complaining labor organization, so as to support a finding of civil contempt;

(3) That the matters and things stated in the motion and accompanying affidavits are not of judicial cognizance upon the facts alleged and at this time;

(4) That the motion is in disregard of the Opinion of the Supreme Court of the United States on December 6, 1938, in the review proceedings in which the motion is entitled and brought, which Opinion interpreted the parts

of the Order of the National Labor Relations Board on which the said motion relies; and that the motion is in effect to secure an enlargement and modification of the Order of the National Labor Relations Board and the final Decree of this Court and by implication and inference to expand the scope and operation of the Order and Decree beyond the fair meaning of what was intended to be prohibited in the light of the issues, so as to make the Board's Order as modified apply to and determine and prohibit matters not litigated, determined and prohibited by such Order and Decree;

(5) That inasmuch as the Amalgamated's motion was brought without legal right, the "response" thereto and "suggestion" by counsel for the National Labor Relations Board are unauthorized and cannot operate to support or cause to be prosecuted a motion which the Amalgamated Utility Workers has no lawful authority to institute or maintain under the National Labor Relations Act; and

(6) That the facts stated in the said motion and accompanying affidavits are insufficient to show or constitute a violation of the modifying Decree entered by this Court on January 21, 1939, granting enforcement of the Order of the National Labor Relations Board entered November 10, 1937, as modified and interpreted by the Opinion of the Supreme Court of the United States on December 6, 1938;

and that the undersigned will, at the time and place above stated, move the Court for such other and

further relief as may be just and appropriate in the premises.

New York, May 18, 1939.

(Sgd) CLAUDE A. HOPE
ISAAC LOBE STRAUS
Of Counsel

ISAAC LOBE STRAUS,
DELAFIELD, MARSH, PORTER & HOPE and
CLAUDE A. HOPE,
Solicitors for International Brotherhood
of Electrical Workers, et al.,
20 Exchange Place,
New York, N. Y.

To:

WHITMAN, RANSOM, COULSON & GOETZ,
Solicitors for Consolidated Edison Company
of New York, Inc., et al.,
No. 40 Wall Street,
New York, N. Y.

BOUDIN, COHN & GLICKSTEIN, ESQS.,
Solicitors for Amalgamated Utility Workers,
No. 20 West 43rd Street,
New York, N. Y.

CHARLES FAHY, ESQ.,
General Counsel National Labor Relations
Board,
Shoreham Building,
Washington, D. C.

ALLAN PERL, ESQ.,
Acting Regional Attorney,
National Labor Relations Board,
No. 120 Wall Street,
New York, N. Y.

Motion denied on ground that the matters submitted in support thereof should properly be asserted in opposition to the Amalgamated Utility Workers' motion to punish for contempt.

June 2, 1939.

T. W. S.,
A. N. H.,
R. P. P.,
C. J. J.

Filed June 2, 1939, United States Circuit Court of Appeals, Second Circuit.

Praecipe.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

[SAME TITLE.]

Sirs:

PLEASE TAKE NOTICE that respondents International Brotherhood of Electrical Workers, International Brotherhood of Electrical Workers, Local Union No. B-825; International Brotherhood of Electrical Workers, Local Union No. B-839; International Brotherhood of Electrical Workers, Local Union No. B-832; International Brotherhood of Electrical Workers, Local Union No. B-826; International Brotherhood of Electrical Workers, Local Union No. B-828; International Brotherhood of Electrical Workers, Local

Union No. B-829; and International Brotherhood of Electrical Workers, Local Union No. B-830 designate the following portions of the record in this cause and request that they be incorporated into the transcript of record to be certified by the Clerk of this Court; and printed, on the application of Amalgamated Utility Workers to the Supreme Court of the United States for a writ of certiorari to review an order made by the United States Circuit Court of Appeals for the Second Circuit made on or about June 2, 1939, which denied the movant's motion for an order adjudging Consolidated Edison Company of New York, Inc., et al., in contempt of Court, etc., to wit:

Notice of motion served by solicitors for International Brotherhood of Electrical Workers, et al., dated May 18, 1939.

Dated, New York, N. Y., August 29, 1939.

Yours, etc.,

ISAAC LOBE STRAUS,
DELAFIELD, MARSH, PORTER & HOPE, and
CLAUDE A. HOPE,
Solicitors for International Brotherhood of Electrical Workers, et al.,
20 Exchange Place,
New York City.

To:
WILLIAM PARKIN, ESQ.,
Clerk of the United States Circuit Court of Appeals for the Second Circuit,
Federal Building,
Foley Square,
New York, N. Y.

BOUDIN, COHN & GLICKSTEIN, ESQS.,
Solicitors for Amalgamated Utility Workers,
20 West 43rd Street,
New York, N. Y.

WHITMAN, RANSOM, GOULSON & GOETZ, ESQS.,
Solicitors for Consolidated Edison Company of New York, Inc., et al.,
40 Wall Street,
New York City.

CHARLES FAHY, ESQ.,
General Counsel,
National Labor Relations Board,
Shoreham Building,
Washington, D. C.

ALLAN PERL, ESQ.,
Acting Regional Attorney,
National Labor Relations Board,
120 Wall St.,
New York City.

Clerk's Certificate.

UNITED STATES OF AMERICA,

SOUTHERN DISTRICT OF NEW YORK.

I, D. E. Roberts, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 8 inclusive,* contain true and complete copies of originals thereof filed in said Court in the case of

CONSOLIDATED EDISON COMPANY OF NEW YORK, *et al.*,

—against—

NATIONAL LABOR RELATIONS BOARD, *et al.*,

as the same remain of record and on file in my office.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit this 30th day of August in the year of our Lord one thousand nine hundred and thirty-nine, and of the Independence of the said United States the one hundred and sixty-fourth.

(Seal)

D. E. ROBERTS,
Clerk.

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* Reference to pages 1 to 8 is to the certified copies of the Notice of Motion and Praecipe filed in the office of the Clerk of the Supreme Court of the United States, which are printed herein at pages 9 to 15.

Letter of August 31, 1939.

OFFICE OF THE CLERK,
SUPREME COURT OF THE UNITED STATES,
Washington, D. C.

August 31, 1939

Delafield, Marsh, Porter & Hope, Esqs.
New York City

Gentlemen:

I have your letter of the 30th instant enclosing certified copies of certain papers filed in the Circuit Court of Appeals in the case of Consolidated Edison Co. v. Nat'l Labor Relations Board, and requesting that these papers be added to the record in this Court in the case of *Amalgamated Utility Workers, etc.* v. *Consolidated Edison Co. of N. Y., Inc., et al.*, No. 342, October Term, 1939. In order to add these papers to the record it will be necessary that counsel stipulate that they be added or that there be submitted a suggestion of a diminution of the record.

I suggest that you immediately contact counsel for the petitioner in the case No. 342 in an effort to obtain a stipulation such as that just referred to, and upon receipt these papers will be printed and attached to the record.

Yours truly,

CHARLES ELMORE CROPLEY,
Clerk,

By H. B. WILLEY,
Assistant.

HBW:IM

Letter of September 1, 1939.

September 1, 1939.

Honorable Charles Elmore Cropley,
Clerk of the Supreme Court of
the United States,
Washington, D. C.

Re: Amalgamated Utility Workers v. *Consolidated Edison Company of New York, Inc., et al.*

Dear Sir:

Thank you for your letter of August 31st acknowledging receipt of the certified copy of notice of motion and precipe which we sent you on August 30th for inclusion in the printed Record.

We had already requested the attorneys for the applicant for the writ of certiorari, Amalgamated Utility Workers, to stipulate to include the notice of motion in question in the printed Record, and they had refused so to do.

In view of the fact that Rule XXXVIII, paragraph 1 requires a certified Transcript of Record to be filed with the petition for review on writ of certiorari, and that paragraph 9 of Rule XIII makes provision with respect to designation of parts of the Record to be printed, and that the stipulation as to the Record does not include our clients who are necessary parties thereto, we do not think it is necessary to apply for a certiorari to correct diminution of Record under Rule XVII.

However, in accordance with the advice contained in your letter, we have prepared a suggestion with respect to the diminution of Record, together with

an affidavit showing the refusal of the attorneys for the applicant for the writ of certiorari to stipulate to include the notice of motion in the Record, and file such suggestion with you herewith. We also, under the practice suggested by paragraph 9 of Rule XIII, file with you herewith a designation of additional parts of the Record to be printed.

We will appreciate your advising us whether these documents are sufficient to obtain the inclusion of the notice of motion in the printed Record.

Yours respectfully,

ISAAC LOBE STRAUS,
DELAFIELD, MARSH, PORTER & HOPE.

WBL:LLH
Enclosures

Designation.

IN THE
SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1939.
No. 342.

[SAME TITLE.]

Come now the respondents International Brotherhood of Electrical Workers; International Brotherhood of Electrical Workers, Local Union No. B-825; International Brotherhood of Electrical Workers, Local Union No. B-839; International Brotherhood of Electrical Workers, Local Union No. B-832; Inter-

national Brotherhood of Electrical Workers, Local Union No. B-826; International Brotherhood of Electrical Workers, Local Union No. B-828; International Brotherhood of Electrical Workers, Local Union No. B-829; and International Brotherhood of Electrical Workers, Local Union No. B-830, in pursuance of paragraph 9 of Rule XIII of the Supreme Court of the United States, and for the purpose of enabling the Clerk to prepare the Record in this cause, hereby request the Clerk to incorporate the portion of the Record into the transcript of the Record herein which is hereinafter indicated, and additional to the Record designated in the stipulation between the appellant and certain of the other respondents, to wit,

Notice of motion served by solicitors for International Brotherhood of Electrical Workers, et al., dated May 18, 1939.

Dated, New York, N. Y., September 1, 1939.

Yours, etc.,

CLAUDE A. HOPE,
ISAAC LOBE STRAUS, DELAFIELD, MARSH, PORTER & HOPE, and
CLAUDE A. HOPE,
Solicitors for Respondents International Brotherhood of Electrical Workers, et al.,
20 Exchange Place,
New York City.

To:

HONORABLE CHARLES ELMORE CROPLEY,
Clerk of the Supreme Court
of the United States,
Washington, D. C.

Notice of Motion to Dismiss.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

[SAME TITLE.]

Sirs:

PLEASE TAKE NOTICE, that at a term of this Court to be held in the United States Court House, Foley Square, Borough of Manhattan, City and State of New York, on the 22nd day of May, 1939, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, the undersigned, in behalf of International Brotherhood of Electrical Workers; International Brotherhood of Electrical Workers, Local Union No. B-825, International Brotherhood of Electrical Workers, Local Union No. B-839; International Brotherhood of Electrical Workers, Local Union No. B-832; International Brotherhood of Electrical Workers, Local Union No. B-826; International Brotherhood of Electrical Workers, Local Union No. B-828; International Brotherhood of Electrical Workers, Local Union No. B-829; and International Brotherhood of Electrical Workers, Local Union No. B-830, the said International Brotherhood of Electrical Workers and each and all of its said Local Unions aforesaid being affiliates of the American Federation of Labor, will move, preliminarily to the hearing of the motion of the Amalgamated Utility Workers, that the petition and motion of Amalgamated Utility Workers, affiliated with the Utility

Workers Organizing Committee, Congress of Industrial Organizations, and all proceedings herein thereon, be DISMISSED, upon the grounds:

(1) That the Amalgamated Utility Workers has no standing, under the National Labor Relations Act or otherwise, to institute and maintain the proceeding and motion as set forth in the notice of motion and petition of the Amalgamated Utility Workers;

(2) That the motion papers fail to show whether the motion and the proceeding are prosecuted by the Amalgamated Utility Workers as in the nature of a civil contempt or a criminal contempt; that the facts alleged in the motion papers and accompanying affidavits do not state and support a charge of either a civil contempt or a criminal contempt, against the employers named; and that neither the motion nor the accompanying affidavits show or allege facts which would establish that any damages were suffered by the complaining labor organization, so as to support a finding of civil contempt;

(3) That the matters and things stated in the motion and accompanying affidavits are not of judicial cognizance upon the facts alleged and at this time;

(4) That the motion is in disregard of the Opinion of the Supreme Court of the United States on December 6, 1938, in the review proceedings in which the motion is entitled and brought, which Opinion interpreted the parts

of the Order of the National Labor Relations Board on which the said motion relies; and that the motion is in effect to secure an enlargement and modification of the Order of the National Labor Relations Board and the final Decree of this Court and by implication and inference to expand the scope and operation of the Order and Decree beyond the fair meaning of what was intended to be prohibited in the light of the issues, so as to make the Board's Order as modified apply to and determine and prohibit matters not litigated, determined and prohibited by such Order and Decree;

(5) That inasmuch as the Amalgamated's motion was brought without legal right, the "response" thereto and "suggestion" by counsel for the National Labor Relations Board are unauthorized and cannot operate to support or cause to be prosecuted a motion which the Amalgamated Utility Workers has no lawful authority to institute or maintain under the National Labor Relations Act; and

(6) That the facts stated in the said motion and accompanying affidavits are insufficient to show or constitute a violation of the modifying Decree entered by this Court on January 21, 1939, granting enforcement of the Order of the National Labor Relations Board entered November 10, 1937, as modified and interpreted by the Opinion of the Supreme Court of the United States on December 6, 1938;

and that the undersigned will, at the time and place above stated, move the Court for such other and

further relief as may be just and appropriate in the premises.

New York, May 18, 1939.

(Sgd) CLAUDE A. HOPE
ISAAC LOBE STRAUS
Of Counsel

ISAAC LOBE STRAUS,
DELAFIELD, MARSH, PORTER & HOPE and
CLAUDE A. HOPE,
Solicitors for International Brotherhood
of Electrical Workers, et al.,
20 Exchange Place,
New York, N. Y.

To:

WHITMAN, RANSOM, COULSON & GOETZ,
Solicitors for Consolidated Edison Company
of New York, Inc., et al.,
No. 40 Wall Street,
New York, N. Y.

BOUDIN, COHN & GLICKSTEIN, ESQS.,
Solicitors for Amalgamated Utility Workers,
No. 20 West 43rd Street,
New York, N. Y.

CHARLES FAHY, ESQ.,
General Counsel National Labor Relations
Board,
Shoreham Building,
Washington, D. C.

ALLAN PERL, ESQ.,
Acting Regional Attorney,
National Labor Relations Board,
No. 120 Wall Street,
New York, N. Y.